IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 15TH JUNE 2007 / 25TH JYAISHTA 1929

WA.No. 1191 of 2007()

AGAINST THE ORDER IN WPC.11963/2007 Dated 13/04/2007

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APPELLANTS/PETITIONERS:

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1. T.V.NANDANAN
   CHARUKARAYIL VEEDU, THALAYOALAPARAMBU P.O.

2. P.E.JOSE, PAZHYAIDATHU VEEDU,
   THALAYOLAPARAMBU P.O.

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENTS/ RESPONDENTS

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1. STATE OF KERALA, REPRESENTED BY
   SECRETARY TO GOVERNMENT, REVENUE DEPARTMENT,
   THIRUVANANTHAPURAM.

2. SECRETARY TO GOVERNEMNT,
   HEALTH & FAMILY WELFARE DEPARTMENT,
   THIRUVANANTHAPURAM.

3. DISTRICT COLLECTOR, KOTTAYAM.

4. REVENUE DIVISIONAL OFFICER, PALA.

5. MEDICAL OFFICER IN CHARGE,
   PRIMARY HEALTH CENTRE, THALAYOLAPARAMBU.

6. KADUTHURUTHY BLOCKA PANCHAYATH,
   REPRESENTED BY ITS SECRETARY,
   KADUTHURUTHY P.O., KOTTAYAM.

7. THALAYOLAPARAMBU GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY,
THALAYOLAPARAMBU P.O.

BY SR. GOVERNMENT PLEADER SMT. R. MEERA.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 15/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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W.A. No. 1191 OF 2007

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Dated this the 15th June, 2007

J U D G M E N T

H.L. Dattu, C.J.:

This Writ Appeal is filed against the interim order passed by this Court in Writ Petition No.11963 of 2007 dated 13th April, 2007. The interim order is , as under:

> *"From the photographs produced in court, it is seen that the construction of the building is half way through, in as much as 5 - 6 feet height walls are constructed. Therefore, respondents are free to complete the construction subject to further orders in this case."*

2. The appellants would contend that if the respondents complete the construction by virtue of the above interim order passed by this court, they will not have even a pathway to reach their residential premises, which is just behind the proposed construction.

3. Taking a sympathetic view in the matter, we had directed the learned Government Pleader to take necessary instructions from the respondents and file a proper affidavit before the court.

4. Pursuant to our directions, the 4th respondent has filed an affidavit before this court. The same is as under:

"I, M.N. Sukumaran, S/o. M.K. Narayanan, 54 years, now at Ernakulam do hereby solemnly affirm and state as follows:

1. I am the Revenue Divisional Officer, Pala and the 4th respondent in the above Writ Appeal. I am conversant with the facts of the above case and am competent to swear to this affidavit.

2. This affidavit is being filed as per the direction of this Hon'ble Court so as to submit about the result of the deliberations conducted for redressal of the grievances of the appellants with regard to the use of the compound of the Primary Health Center, Thalayolaparambu for ingress and egress from their houses to the main road.

3. It is understood that the appellants have filed Ext.P8 petition before the 1st respondent in the above Writ Appeal and the same is pending consideration of the Government. Till the disposal of Ext. P8 by the Government, the following arrangement has been brought about amicably through the discussions between the parties.

4. It is agreed that the appellants can make use of a three feet wide property of the Primary Health Center for ingress and egress to their houses. The said three feet wide portion is lying east – west in direction in between the Primary Health Center and the Junior Public Health Nurse Training Center with opening to the Karthiyanani Devi Temple road.

5. The above facility of the said three feet wide portion can be used for pedestrian traffic by the appellants

as well by other residents living behind the Primary Health Center. The hospital authorities have stated that they are not proceeding with the construction of the compound wall on the western side till Ext.P8 application pending before the 1st respondent is considered by the Government.

6. The above facts are respectfully submitted for the consideration of this Hon'ble Court."

5. Learned counsel appearing for the appellants is satisfied with the statement so made by the 4th respondent in the affidavit.

Placing on record the affidavit filed by the 4th respondent, this Writ Appeal is disposed of. The hospital authorities will permit the petitioners/appellants to make use of the 3 feet wide pathway, lying east to west in between the Primary Health Center and the Junior Public Health Nurse Training Center with opening to the Karthiyanani Temple Road, till their application is considered by the 1st respondent/State Government . I.A. No. 395 of 2007 is also disposed of.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

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